

REMARKS/ARGUMENTS

In the restriction requirement dated October 3, 2008, the Examiner delineated the following inventions as being patentably distinct.

Group I: Claims 1-5, drawn to a method for the isolation of expressed sequence tags in different development phases of plants; and

Group II: Claim 6, drawn to a kit.

Applicants provisionally elect with traverse the invention of Group I, Claims 1-5.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. § 803). All of the claims, either directly or indirectly depend on Claim 1. A dependent claim is one which contains all the features of another claim and is in the same category of claims as other claims. It does not matter if a dependent claim itself contains a further invention. All of the claims should be grouped together since they form a single general inventive concept. The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusions in regard to patentable distinctions (M.P.E.P. § 803). Applicants respectfully traverse the restrictions on the grounds that the Examiner has not provided sufficient reasons or examples to support patentable distinctness. Products and method of use should be examined together as a single inventive entity especially wherein the sole disclosed utility of the product is that recited in the specification.

Different classification of subject matter to be divided is not conclusive proof of independent status and divisibility. Applicants respectfully traverse on the grounds that the Office has not shown that a burden exists in searching the entire application.

Further, the M.P.E.P. § 803 states as follows:

“If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it

on its merits, even though it includes claims to distinct or independent inventions.”

For the reasons set forth above, Applicants request that the restriction requirement be withdrawn.


Further, Applicants reserve the right to file divisional applications on the non-elected subject matter, if so desired, and be accorded the benefit of the filing date of the parent application.

Divisional applications filed thereafter should not be subject to a double patenting ground of rejection, 35 U.S.C. § 121, *In re Joyce* (Comr. Pat. 1957) 115 USPQ 412.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and an early notice of such action is earnestly solicited.

Respectfully submitted,

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